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2011 IL App (3d) 110386-U

Order filed October 19, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

<i>In re</i> C.D. and A.E.,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Minors)	Kankakee County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-11-0386 and 3-11-0387
)	Circuit Nos. 09-JA-18 and 09-JA-23
v.)	
)	
Chaniece D.,)	Honorable
)	Michael J. Kick,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that respondent was unfit and that it was in the best interests of the children to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Chaniece D., unfit to parent the minors C.D. and A.E.

At the best interest hearing, the trial court determined that it was in the best interests of the children to terminate respondent's parental rights. On appeal, the respondent argues that: (1) the

State failed to prove her unfitness by clear and convincing evidence; and (2) the trial court erred in finding that it was in the children's best interests to terminate her parental rights. We affirm.

¶ 3

FACTS

¶ 4 On April 9, 2009, the State filed a juvenile petition, alleging that C.D., who was 10 months old at the time of the petition, was neglected in that the minor's environment was injurious to his welfare. Specifically, the State alleged that respondent had mental health issues, including depression, and was in need of treatment (705 ILCS 405/2-3(1)(b) (West 2008)). At the hearing, the State presented evidence that respondent had psychiatric issues and was not on medication because she was pregnant at the time. On or about March 16, 2009, while 32 weeks pregnant with A.E., respondent attempted suicide by drinking bleach. In response, C.D. was placed in foster care with his maternal great aunt on April 7, 2009.

¶ 5 On May 1, 2009, three days after respondent gave birth to A.E., the State filed a petition alleging neglect because his environment was injurious to his welfare. A.E. was placed in foster care with his paternal grandmother. The children were not placed together because C.D.'s foster mother expressed that it would be difficult to care for both an 11-month-old and an infant.

¶ 6 On May 19, 2009, the trial court held a combined adjudicatory hearing for both children. The parties stipulated to the facts, which included respondent's mental health issues and her noncompliance with her mental health treatment. Upon review of the evidence, the trial court adjudicated both minors neglected.

¶ 7 At a dispositional hearing for C.D. on June 9, 2009, respondent was found dispositionally unfit, and C.D. was made a ward of the court. The trial court reviewed a report from June 4, 2009, which referred to respondent's ingestion of bleach when she was 32 weeks pregnant with

A.E. It was noted that on several occasions, respondent stated she would like to sign her rights over for both of her children. The integrated assessment noted respondent was unemployed, did not have stable housing, had difficulty managing her anger, exhibited impulsive behavior, and failed to follow up with psychiatric appointments following discharge from a psychiatric hospitalization. At parent-child visitations, respondent and C.D. had a good relationship. However, it was noted that during a visit, while respondent was holding C.D., she became upset, which frightened C.D. and he began to cry.

¶ 8 After recommendations from the parties, the trial court approved the service plan for respondent, which required that she follow the recommendations of her psychiatric evaluation and participate in domestic violence classes, individual therapy, parenting classes, a substance abuse assessment, and random drug testing.

¶ 9 Respondent was again found dispositionally unfit as to A.E. on July 21, 2009, and A.E. was made a ward of the court. The trial court reviewed a report which noted respondent had suicidal intentions and continued to be unstable. It was also noted that A.E. sought comfort from respondent. However, during a visit, A.E. became anxious and fearful when respondent was upset and verbally aggressive toward A.E.'s father. Following review of the evidence, the trial court approved the recommended services and ordered a psychological evaluation of respondent. On September 3, 2009, C.D. was placed in the same foster home as A.E.

¶ 10 After numerous permanency review hearings, on November 16, 2010, the trial court found that respondent did not make reasonable efforts or progress toward the return of her children. The evidence presented to the trial court noted that although respondent attended weekly supervised visits with the minors, her compliance with her service plan was sporadic

throughout the hearings. Moreover, respondent continued to test positive for marijuana on numerous occasions.

¶ 11 Specific evidence included a report filed with the court on October 29, 2009, which stated that in August 2009, a police officer reported that respondent had a warrant issued for possession and sale of drugs and that she also had a charge for aggravated battery. The report also rated respondent's progress as unsatisfactory because she had not been participating in her service plan. At a hearing on December 15, 2009, respondent's caseworker stated that she had not been compliant in her service plan for the last six months, but within the last six weeks she had been. At a hearing on February 16, 2010, a caseworker reported that respondent's evaluation for drug treatment and counseling were satisfactory because she was attending sessions; however, she was still testing positive for marijuana. A report from April 22, 2010, reported that respondent had a mental health episode on April 14, 2010, when she got upset at A.E.'s father for speaking to another woman and threatened him with a knife.

¶ 12 A hearing report from November 10, 2010, stated that respondent was pregnant with her third child. In addition, respondent stopped working in March 2010, was evicted from her apartment in June 2010, and had stopped attending therapy and was discharged. Respondent's discharge summary noted that she had made little to no progress, remained impulsive and had a chaotic lifestyle. Respondent continued to test positive for marijuana, no longer attended drug treatment, and had missed 27 treatment sessions since June 2010. Furthermore, it was noted that respondent remained emotionally unstable and had a pattern of re-engaging in services just prior to court hearings.

¶ 13 On December 22, 2010, the State filed amended petitions to terminate the respondent's

parental rights to C.D. and A.E., alleging that respondent had failed to make reasonable efforts to correct the conditions and failed to make reasonable progress towards the return of her children during the initial nine-month period between May 19, 2009, through February 19, 2010, and failed to make reasonable progress during the subsequent nine-month period between February 19 through November 19, 2010 (750 ILCS 50/1(D)(m)(i), (D)(m)(ii), (D)(m)(iii) (West 2010)). A hearing was held on the State's petition on January 11 and April 5, 2011. At the hearings, a caseworker testified about respondent's performance on her service plan, and rated her performance as unsatisfactory. The caseworker stated that respondent would attend her drug treatment for three or four months, then test positive for marijuana and have to restart the program. She recalled respondent testing positive for marijuana in October 2010. In addition to not completing drug treatment, respondent did not complete therapy because, despite respondent's good relationship with her therapist, she was discharged in July 2010 due to lack of attendance. The caseworker also noted that during therapy, respondent was prescribed Lexapro. The caseworker observed that respondent initially took the medication and became stable; however, she eventually stopped taking the medication and became pregnant with her third child.

¶ 14 At the hearing, respondent admitted that she had not completed any of the tasks assigned to her under her service plan, and had continued to use marijuana. After reviewing all the evidence, the trial court found respondent unfit to parent C.D. and A.E. because she did not make reasonable efforts or progress toward the return of her children during the initial nine-month period between May 19, 2009, through February 19, 2010, and failed to make reasonable progress during the subsequent nine-month period between February 19 through November 19, 2010.

¶ 15 At the best interest hearing for both minors on May 3, 2011, a report relating to respondent's third child indicated that respondent was making no progress because she was not attending drug treatment and was noncompliant with counseling and psychotropic medication monitoring, and she had been discharged from therapy due to lack of attendance.

¶ 16 Addie W., the children's foster mother and A.E.'s paternal grandmother, testified that she had a good relationship with the children during their foster care. She stated that at the time of the hearing, the children were 3 and 2 years old, and had been in her care since they were 16 months old and 3 days old. She noted that she was a certified nursing assistant with health insurance that would cover both children if needed. While Addie was at work, the children were enrolled in day care at the YWCA. In addition, the children were also involved with the church and had a good relationship with extended family in the nearby area. Addie stated that if respondent lost her parental rights, she would adopt both children. Addie maintained a good relationship with respondent, and would allow the children's parents to visit.

¶ 17 Kimenita Jones, who was the fiancée of respondent's brother, testified that the children have a loving relationship with respondent and continued to call her "mommy."

¶ 18 After considering the statutory best interest factors and the evidence presented, on May 5, 2011, the trial court found that it was in C.D.'s and A.E.'s best interests to terminate respondent's parental rights. Respondent appeals.

¶ 19 ANALYSIS

¶ 20 On appeal, respondent first challenges whether the State proved her unfit to parent C.D. and A.E., and whether she failed to make reasonable progress toward the return of her minor children by clear and convincing evidence.

¶ 21 A trial court will find a mother unfit when she fails to make reasonable progress towards the return of her children. 750 ILCS 50/1(D)(m)(ii) (West 2010). The burden is on the State to prove by clear and convincing evidence that the mother failed to make reasonable progress "within 9 months after an adjudication of neglected or abused minor" or "any 9-month period after the end of the initial 9-month period." 750 ILCS 50/1(D)(m)(ii), (D)(m)(iii) (West 2010).

¶ 22 We review a trial court's unfitness determination under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *In re D.F.*, 201 Ill. 2d 476 (2002).

¶ 23 In the present case, respondent's first argument only challenges the trial court's determination of respondent's reasonable progress during the during the initial and subsequent nine-month periods. She contends that her substance abuse treatment and testing cooperation with mental health services were rated satisfactory. Respondent does not dispute the trial court's finding that she did not make reasonable efforts during the initial nine-month period. Respondent's failure to dispute this finding concedes that she is unfit on the unchallenged basis of reasonable efforts. See *In re D.L.*, 191 Ill. 2d 1 (2000) (holding that when a trial court bases a finding of unfitness upon more than one ground, we must affirm if any one of the grounds justifies the finding).

¶ 24 However, even setting respondent's concession aside, our review of the record does not support a finding that respondent made progress in her service plan. Respondent was often non-compliant with her service plan during both the initial and subsequent nine-month period.

Furthermore, she tested positive for marijuana as recently as October 2010. It was also noted in respondent's discharge summary that she would often engage in services only prior to court hearings, and had missed 27 treatment sessions since June 2010. Respondent admitted that she did not have a certificate of completion for any of the tasks assigned to her in the service program. In addition, the majority of respondent's ratings for her service plan progress were unsatisfactory.

¶ 25 As a result, we find that the trial court's unfitness decision was not against the manifest weight of the evidence. The State proved by clear and convincing evidence that the respondent did not fully comply with many aspects of her service plan during the review period.

¶ 26 Next, respondent argues that the trial court erred in holding that it was in C.D.'s and A.E.'s best interests to terminate her parental rights. At the best interest hearing, all considerations must yield to the best interest of the minor. *In re G.L.*, 329 Ill. App. 3d 18 (2002). It is the State's burden to prove by a preponderance of the evidence that terminating parental rights is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347 (2004). The trial court must consider several statutory factors, including: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background and ties; (4) the minor's sense of attachment and continuity of relationships with parental figures; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of persons available to care for the minors. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 27 On review, we will not disturb the trial court's best interest ruling unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005). A finding is against

the manifest weight of the evidence where a review of the record demonstrates that the opposite conclusion is clearly evident. *In re B.B.*, 386 Ill. App. 3d 686 (2008).

¶ 28 In this case, respondent's only argument against the termination of her parental rights was that there was a bond between mother and child. However, the existence of a bond between respondent and her children "does not automatically insure that the parent will be fit or that the child's best interests will be served by that parent." *In re J.B.*, 198 Ill. App. 3d 495, 499 (1990). Despite the good relationship respondent had with both her children, her drug abuse and mental instability shows that respondent will be unable to provide a safe and secure environment for her children.

¶ 29 Furthermore, the children's foster mother provided them with a sense of stability and permanency over the past two years. She was able to provide a safe and loving environment for the children, who have lived with her most of their lives. She also provided them with the medical care they needed. The children were involved in the community and had a good relationship with their extended family in the area. Moreover, the foster mother was willing to adopt both children. Accordingly, we hold that the trial court's finding that it was in the best interests of the children to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 30 **CONCLUSION**

¶ 31 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 32 Affirmed.